

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA
ex rel. TULLIO EMANUELE, M.D.**

Plaintiff-Relator,

v.

MEDICOR ASSOCIATES, INC., et al.,

Defendants.

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Civil No. 1:10-cv-00245-SJM

**RELATOR’S MOTION FOR PARTIAL
SUMMARY JUDGMENT ON STARK LAW ISSUES**

Plaintiff-Relator Tullio Emanuele, M.D. (“Relator”) hereby files this Motion for Partial Summary Judgment on Stark Law Issues. For the reasons discussed in the accompanying brief, the undisputed evidence shows that Relator is entitled to summary judgment establishing the following:

1. That a “financial relationship” has existed between Hamot Medical Center (“Hamot”) and Richard W. Petrella, M.D., Robert J. Ferraro, M.D., Charles M. Furr, M.D., Timothy C. Trageser, M.D., and Donald Zone, M.D. (the “Medicor Physicians”) for purposes of the Stark Law at all times since December 4, 2007;

2. That Defendants did not meet the requirements to satisfy an exception under the Stark Law for the following periods: (i) from December 4, 2007 through December 31, 2007; (ii) from January 1, 2008 through June 30, 2008; (iii) from July 1, 2008 through December 17, 2008; (iv) from December 18, 2008 through June 30, 2009; (v) from July 1, 2009 through March 31, 2010; and (vi) from December 31, 2008 through March 31, 2010.¹

¹ Although Relator contends that the arrangement between Hamot and Medicor never complied with the Stark Law, this motion is limited to the period from December 4, 2007 through March

In support of this motion, Relator has contemporaneously filed (i) a brief in support, (ii) a Statement of Material Facts, (iii) an Appendix containing copies of documents referenced therein, and (iv) a proposed order.

Respectfully submitted, this 6th day of October, 2014.

/s/ Andrew M. Stone

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31, 2010. Moreover, this motion focuses on the lack of a valid written agreement for the specific medical directorships discussed herein, and does not address Defendants' compliance with **other** elements of any exception under the Stark Law, including the requirements that remuneration be fair market value and that the arrangements must be commercially reasonable. Nor does this motion address whether any of the **other** compensation arrangements between Hamot and Medicor complied with an exception under the Stark Law. Finally, this motion does not address issues such as (i) the number of false claims submitted during the relevant periods, (ii) the amount paid on such claims, or (iii) whether Defendants acted "knowingly" for purposes of the False Claims Act. However, a ruling on the issues presented by this motion will greatly narrow the issues remaining for trial. Indeed, courts frequently rule as a matter of law on the existence of a "financial relationship" and the failure to satisfy an exception under the Stark Law, while leaving other issues for trial. *See, e.g., United States ex rel. Kosenske v. Carlisle HMA, Inc.*, 554 F.3d 88 (3d Cir. 2009) (holding as matter of law that Stark Law was implicated and that defendant failed to satisfy exception, but not addressing knowledge or damages); *United States ex rel. Bartlett v. Ashcroft*, 2014 U.S. Dist. LEXIS 116432 (W.D. Pa. Aug. 21, 2014) (granting summary judgment as to existence of financial relationship and failure to satisfy exception under Stark Law); *United States ex rel. Singh v. Bradford Reg'l Med. Ctr.*, 752 F. Supp. 2d 602 (W.D. Pa. 2010) (granting summary judgment on Stark Law violation, but reserving issues of knowledge and damages).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

This 6th day of October, 2014.

/s/ G. Mark Simpson